



February 3, 2020

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8 / 17 CFR Part 240; Release No. 34-87458; RIN 3235-AM49; File No. S7-23-19

Dear Ms. Countryman:

The Corporate Governance Coalition for Investor Value (the “Coalition”) was formed to provide a forum for the discussion of issues among its members to advocate for strong corporate governance policies, and federal securities laws that promote long-term value creation for investors. Coalition members represent American businesses of all sizes, from every industry sector, and geographic region. These businesses produce the goods and services that drive the American economy, employing and creating opportunities for millions of Americans, and serving the countless communities nationwide in which they operate.

The Coalition appreciates the ongoing work by the Securities and Exchange Commission (“SEC” or “Commission”) to modernize the federal proxy rules. The Coalition and its members have long been concerned about the decline in the number of U.S. publicly-traded companies over the last twenty years, and we believe that a proxy system which has empowered a small group of activists over the vast majority of shareholders is a contributing factor to that decline. Accordingly, we support several aspects of the Commission’s November 5th rule proposal entitled “Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8” (“Proposal”).

Discussion

The Coalition and its members believe that effective communication and engagement between a company and its shareholders are critical to creating long-term value for shareholders. SEC rules governing shareholder proposals were adopted in order to facilitate the consideration of constructive ideas put forth by investors seeking to improve the governance of a company. The Coalition supports a regulatory framework that allows shareholders to make recommendations or suggestions that could improve a company’s performance and garner a significant level of shareholder support.

Unfortunately, the shareholder proposal rules under Rule 14a-8 have devolved into a vehicle that a micro-minority of special interests uses to advance their own agendas at the expense of investors as a whole. Instead of highlighting urgent matters that could further shareholder interests, many proposals are dominated by subject matters most investors deem immaterial to their decision-making. For example, more than one-third of all shareholder proposals in 2019 at Fortune 250 companies were sponsored by four individual investors.¹ This system requires companies to devote significant time and resources towards dealing with idiosyncratic issues, and distracts management and shareholders from proposals that more serious, value-minded shareholders put forward.

The Coalition has previously called on the SEC to, as an initial step, raise the levels of support that unpopular proposals must receive before they can be resubmitted in a subsequent year.² As the Coalition noted in its July 2017 letter to the SEC, raising the resubmission thresholds would not in any way “disenfranchise” shareholders that seek to be heard. It would still allow shareholders who meet holding requirements to submit a proposal but would not subject others to the costs and distractions that occur when unpopular proposals are repetitively included in a company’s proxy statement.

Proposal

We are encouraged by and support many provisions in the Proposal, including:

- Modifying the eligibility requirements for Rule 14a-8 to ensure that shareholders have a meaningful stake in a company prior to submitting a proposal;
- Requiring greater disclosure for proponents that submit “proposals by proxy” as well as a shareholder engagement component to eligibility requirements; and
- The proposed increase in the “resubmission thresholds” under Rule 14a-8 so that shareholders do not have to register their opposition to unpopular proposals over and over.

Current requirements dictate that an individual is eligible to submit a shareholder proposal if they hold \$2,000 worth of stock for one year. We agree with the Commission that this threshold is extremely low relative to the market capitalization of many companies and therefore may not represent a meaningful economic interest for an individual. We are also concerned that current rules allow an individual or an entity to purchase a small amount of stock for the sole purpose of filing shareholder proposals over immaterial issues, an outcome that is not beneficial for shareholders as a whole.

We support the new thresholds included in the Proposal that would require a shareholder to hold at least:

¹ Proxy Monitor 2019: Proxy Season Overview, August 2019.

² Corporate Governance Coalition for Investor Value Letter to SEC. July 17, 2017, available at <https://www.centerforcapitalmarkets.com/wp-content/uploads/2017/07/20170717-CGCIV-Final-Resubmission-Thresholds-letter.pdf>

- \$2,000 of the company's securities entitled to vote on the proposal for at least three years;
- \$15,000 of the company's securities entitled to vote on the proposal for at least two years; or
- \$25,000 of the company's securities entitled to vote on the proposal for at least one year

We believe these new thresholds would mitigate some of the abuses of the current system while still providing an avenue for interested shareholders to submit proposals.

As proposed, the amended rule would also require shareholders that use a representative to submit a proposal under Rule 14a-8 to identify the shareholder and include a statement by the shareholder authorizing the representative to act on the shareholder's behalf. While this would help bring sunlight to "proposals by proxy" where sometimes the identity of the actual shareholder is not abundantly clear, we believe the Commission could go a step further and require additional disclosure regarding a proponent's motives and reasons for submission which is material information for investors.

The Coalition also strongly supports changes to the "resubmission rule" included in the Proposal. Currently, Rule 14a-8(i)(12) allows a company to exclude a shareholder proposal *only* if it failed to receive the support of 3% of shareholders if voted on once in the last five years; 6%, twice in the last five years; and 10%, three or more times in the last five years. Thus, a proponent is allowed to resubmit a proposal even if nearly 90% of shareholders have rejected it on multiple occasions.

The SEC has in the past recognized that the current resubmission rule disadvantages the vast majority of investors. In 1997, the SEC proposed raising the resubmission thresholds from the 3%/6%/10% levels to a more reasonable 6%/15%/30%. As the SEC stated at the time, "[W]e believe that a proposal that has not achieved these [proposed] levels of support has been fairly tested and stands no significant chance of obtaining the level of voting support required for approval."³ We believe this sentiment is still relevant, and the Coalition therefore supports changes to the resubmission thresholds in the Proposal, including a "momentum requirement" that would disqualify a proposal from being resubmitted if it receives a certain level of declining support.

Conclusion

We appreciate the good work of the SEC on this and other rulemakings to promote the interests of public company shareholders and to make the public company model attractive again for growing businesses. The Coalition looks forward to working with the Commission and staff on these critical issues.

³ Amendments to Rules on Shareholder Proposals. September 18, 1997.

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Sincerely,

U.S. Chamber of Commerce

National Black Chamber of Commerce

Retail Industry Leaders Association (RILA)

American Securities Association (ASA)

Biotechnology Innovation Organization (BIO)

National Association of Real Estate Investment Trusts (NAREIT)

TechNet

Independent Community Bankers of America (ICBA)

National Investor Relations Institute (NIRI)